United States Court of Appeals

for the Second Circuit

REPLY BRIEF

76-1300

Docket No. 76-1300

IN THE

United States Court of Appeals

For the Second Circuit

UNITED STATES OF AMERICA

Plaintiff-Appellee,

V.

DELIA AGUILAR SAN JUAN

Defendant-Appellant

REPLY BRIEF OF DEFENDANT—APPELLANT DELIA AGUILAR SAN JUAN

SAMUEL GRUBER
218 Bedford Street
Stamford, Connecticut 06901
203-323-7789

JAMES W. MURDOCH
121 Main Street
Burlington, Vermont 05401
802-864-9811
Attorneys For Defendant-Appellant

United States District Court
District of Vermont
HON. ALBERT W. COFFRIN, District Judge

TABLE OF CONTENTS

CASES CITED

Docket No. 76-1300

United States Court of Appeals

For the Second Circuit

UNITED STATES OF AMERICA

Plaintiff-Appellee,

V.

DELIA AGUILAR SAN JUAN

Defendant-Appellant

REPLY BRIEF OF DEFENDANT—APPELLANT DELIA AGUILAR SAN JUAN

Point I

Contrary to the Government's claim, the facts in the record demonstrate that the defendant had no knowledge or notice of the reporting requirements at any time prior to the time she was asked to go to the border inspection station.

On page 26-27 of the Government's Brief (hereafter "GB.-") The Government maintains that Customs Form 6059-B and the red, white and blue customs poster (Government Exhibit 14) gave notice to the defendant that a report was required. Furthermore, the Government suggests that the defendant had

knowledge of the statute and the reporting requirements and thus can "hardly be held to be in the position of the innocent violator".

Insofar as the Government's contentions purport to describe the situation with respect to defendant's notice and knowledge at the time Mrs. San Juan was on the bus, they are contrary to the facts set forth in the record.

In the first place, the Customs Form was not presented to everyone coming into the United States at Highgate Springs because "it would take forever and a day to process people coming in to fill this out" (TRc. 149). The form, nevertheless, was used "sometimes" and not at other times. It would be used "if we felt the best purpose of the customs would be served (id.) The form was not, the Government concedes, presented to Mrs. San Juan on the bus (GB.6).

In the second place, with respect to the 13" x 20" Customs poster, the Government nowhere in its Brief describes the location of the poster on the date of Mrs. San Juan's arrival at Highgate Springs. But the evidence is clear that the poster was on a bulletin board as one enters the Customs house (TRc. 166) It could not have come to Mrs. San Juan's notice, if at all, until after she had alighted from the bus and had entered the Customs house with the inspector.

With respect to Mrs. San Juan's purported *knowledge* of the reporting requirements when she was on the bus, the only testimony as to her knowledge

comes from Inspector Johnson who, on direct examination by the Government, and in answer to a question put to him, stated:

> "We have the forms in the office if the person wasn't aware of the reporting requirements which I am sure many people aren't. *In her case, we felt perhaps she wasn't* (A. 12; TRc. 29). (Emphasis added).

Thus, the Government's own witness negatives its claim of knowledge on Mrs. San Juan's of the reporting requirements of the Act and regulations when she was on the bus.

It necessarily follows from the above analysis of the lack of notice to the defendant and her lack of knowledge of the reporting requirements when she was on the bus that the Government's only charge in the case at bar against her that she violated the statute, when she did not tell the Customs inspector of the money and failed to file a report cannot be sustained. The charge against her as the Government said repeatedly was not for failing to file Form 4790 in the Customs house. "We are not" the Government said, "charging her with doing that at this point in time" and "... we are not charging her with that incident in this case." (Defendant's Brief, 27)

Lacking notice and knowledge, the Government's sole charge of statutory violation by Mrs. San Juan on the bus cannot be sustained. *United States v. Mancuso*, 420 F.2d 556 (2 Cir., 1970); *Lambert v. California*, 355 U.S. 225*

---

* These cases were cited in defendants' main Brief but there were given wrong volume and page numbers. Counsel regrets any inconvenience to the Court.

Point II

The defendant was charged by the government soley with violating the statute on the bus and it offered evidence in support of this charge. She was not charged with violating the statute at any other time or place. On the evidence to prove violation on the bus the District Court should have granted defendant's motion for acquittal.

In its Brief (p.33) the Government now contends for the first time that a violation could either have been found on the bus or in the customs house.

The flaw in this contention, even if be admitted for purpose of argument only, is that the Government explicity rejected charging the defendant with the violation in the Customs house. The Government said:

> "We believe there are violations when she declined to sign it inside. However, we indicated we are not charging her with doing that at this point in time . . . We believe she can be charged with that, however, but we are not charging her with that incident in this case." (Defendant's Brief. 27)

Its theory of the case, and the facts adduced to prove it, was consistent throughout the proceedings up to and including its summations to the jury where, as already noted (Defendant's Brief 29) the Government said: "That violation took place right there on that bus and no written report was filed".

The Government cites *United States v. Freuhauf*, 196 F. Supp. 198, *United States v. Kelley*, 254 F.Supp. 9, and *United States v. Schillaci*, 166 F. supp. 303 for the proposition that a defendant may not require the

Government to furnish it with a bill of particulars as to its theory of a case. In the case at bar, these cases are inapposite because not only did the Government here voluntarily assert its theory not once but repeatedly throughout the proceedings, but its evidence was directed to proof of that theory.

As a matter of fact, when counsel for the defendant objected (TRc. 116-117) to any evidence after the money instruments were found in the secondary inspection because the Government in its opening statement

> "... indicated that the violation of this statute occurred on the bus when she did not make an oral declaration. At this point he [the United States attorney] is coming ... into an area which is totally irrelevant to whether or not the violation occurred on the bus ..."

the reply of the Government, in its most material aspect was:

> "... We are suggesting that the material *thereafter* indicates *what her intention was at that time on the bus*. Some of the statements are admissions; some of them are evidence of what her intent was *at that time*." (TRc. 117; emphasis added)

The District Court overruled defendant's objection but what we here reemphasize is that the Government's whole case rested exclusively on its charge that Mrs. San Juan violated the statute and regulations on the bus.

Actually the District Court itself made clear to the jury that the only offense charged against the defendant by the Government was that she failed to report the money when she was on the bus.

In commenting on the admission into evidence of certain letters (Government Exhibits 3 and 13) to which defendant had objected as clearly prejudicial the District Court said:

> "Now I do think it is proper at this time to remind you that in this matter Mrs. San Juan is charged with the offense of willfully failing to file a report with reference to the amount of money she was carrying . . . These letters are not being admitted for the truth of anything contained therein, and they will be considered by you only in connection with the knowledge and intent of Mrs. San Juan with reference to filing the report in this matter (TRc. 271)"

The District Court then went on:

> "You will recall this is when she came into the country that the Government claims the report should have been filed, and further, *the Government claims that the offense occurred when she failed to report when she had this money in her possession at the time she was on the bus and she was first asked about it.* *
>
> *Now she is charged with no other offense in this matter, and you are not to consider these letters in connection with any other offense. I know of no other offense, as a matter of fact* (TRc. 272, emphasis added)

At the time, then, when defendant made her motion for judgment of acquittal, the District Court had before it only the charge of the Government of a violation on the bus, a charge which the District Court itself accepted as the only violation of which the defendant was accused.

---

* There is no evidence that the defendant was ever on the bus asked about the money. We believe the Government will agree. The District Court's statement in this respect was inadvertent.

Without proof of any knowledge or notice to the defendant of the reporting requirements, it was plain error for the Court to rule as it did (TRc. 207) that the requisite willful intent could be determined beyond a reasonable doubt by the jury because of defendant's failure to advise the customs inspector on the bus that she was carrying more than $5,000.

It is conceded that such a statement is not required by any law or regulation. No law or regulation prohibits importation of any amount of currency. These factors combined with lack of notice and knowledge on defendant's part on the bus clearly negate any kind of intent, specific or general, let alone willful, on the defendant's part to violate the statute when she was on the bus. The District Court's failure to acquit upon defendant's motion under these circumstances was prejudicial error.

Point III

The Government's claim that the defendant failed to raise the vagueness issue in the District Court is without merit.

The Government contends that the issue of vagueness was not raised in the court below (GB. 25)

In so doing, it overlooks defendant's memorandum filed April 10, 1976 (Record Document 40) in support of her motion for judgment notwithstanding the verdict. Point III of the memorandum is as follows:

> "The reporting sections of the Act and the regulations thereunder are void under the Due Process clause of the Fifth Amendment for fundamental unfairness and a conviction thereunder cannot be sustained".

The memorandum thereafter argues defendant's claim extensively.

In denying the motion the District Court stated, *inter alia*, that "the motion is denied on all grounds stated in your memorandum". Presumably the Court considered defendant's vagueness argument.

The Government's memorandum in opposition to the motion (Record Document 41) does not mention Point III specifically, but it does state:

> "Defendant raises other issues concerning self-incrimination . . . as well as the validity of the regulations issued pursuant to the statute . . ."

It was precisely the issue of the validity of the regulations that defendant raised in her motion. The Government had notice thereof and could have submitted argument in answer thereto and thus have made a record. It chose not to do so.

CONCLUSION

The judgment of conviction should be reversed and the matter remanded to the District Court for the entry of a judgment of acquittal.

Respectfully submitted,

Samuel Gruber
218 Bedford Street
Stamford, Conn. 06901

James Murdoch
131 Main Street
Burlingotn, Vt. 05401
Attorneys for the Appellant-Defendant

September 29, 1976

DOCKET NO. 76-1300

IN THE

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA

PLAINTIFF-APPELEE

VS.

DELIA AGUILAR SAN JUAN

DEFENDANT-APPELLANT

CERTIFICATE OF SERVICE

This is to certify that three copies of the Reply Brief of the Defendant-Appellant Delia Aguilar San Juan in the above matter were deposited in the United States Post Office, postage prepaid, Stamford, Connecticut, addressed to George W. F. Cook, United States Attorney, District of Vermont, Rutland, Vermont 05701, certified mail return receipt requested on September 30, 1976.

Samuel Gruber

Samuel Gruber, Esq.
218 Bedford Street
Stamford, Connecticut 06901